

THE MARK O. HATFIELD

COURTHOUSE NEWS

A Summary of Topical Highlights from decisions of the
U.S. District Court for the District of Oregon
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Criminal Law

Judge Ann Aiken held that the statute that makes being a felon in possession of a firearm unlawful, 18 U.S.C. § 922(g), is not unconstitutional under the Commerce Clause in light of three recent Supreme Court decisions. Judge Aiken found that § 922(g) contains the specific jurisdictional element missing from statutes previously found unconstitutional. The court also rejected a defense request for an alternative jury instruction on the interstate commerce element of the offense. United States v. Sanger, CR 00-60091-AA (Opinion, Oct., 2000); United States v. Naidu, CR 00-60047-AA (Opinion, Sept. 2000).

AUSA: Frank Papagani, Jr.
William E. Fitzgerald
Defense:
Mark Bennet Weintraub

Contracts

Plaintiff Mickey Novak brought an action against Seiko Corporation, Seiko Instruments Corporation, Seiko Epson

Corporation, and Time Tech, Inc., alleging that he was denied compensation owed him for introducing the defendants to Nike for a sports watch venture. He asserted claims for breach of contract, breach of joint venture agreement, breach of fiduciary duty, fraud and negligent misrepresentation. Defendants moved for summary judgment on all claims. Novak conceded the motions with respect to the breach of joint venture agreement and breach of fiduciary duty. Judge Marsh granted defendants' motions for summary judgment on the contract and fraud claims and dismissed the case.

Novak had initiated a meeting with Nike on behalf of Time Tech, of which he was a former director. Time Tech was in the business of marketing inexpensive watches. However, a month before, another individual, the CEO of Fossil, Inc., had already discussed a sports watch venture with Nike; the outcome of the latter meeting was that Nike initiated a meeting with a managing director of Seiko Instruments Corporation. Seiko Instruments was a manufacturer of

watches and watch components. Nike and Seiko Instruments eventually embarked on a joint venture under which Seiko Instruments developed and manufactured a sports watch marketed by Nike.

Novak asserted that he was entitled to compensation, in the form of a 3% commission on gross sales, for having initiated the joint venture. Novak conceded that there had been no express contract to that effect, but argued that there had been an implied contract or, alternatively, that he was entitled to recover compensation under quasi-contract. Judge Marsh found that there was no implied contract because there had never been an agreement as to Novak's compensation. He found no equitable considerations demanding that the law imply a contract because Novak's actions did not bestow a benefit on Seiko Instruments. Novak had acted on behalf of Time Tech, which was never a party to the joint venture. He was never authorized to act on behalf of Seiko Instruments, there was no evidence that the

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information Novak received was unavailable to Seiko Instruments from other sources, and there was no evidence that the joint venture between Nike and Seiko Instruments was causally related to Novak's efforts.

Judge Marsh also held that the defendants were entitled to summary judgment on Novak's fraud claim. He found no evidence of false statements or misrepresentations made to Novak about the joint venture, and concluded that even if there had been, what Novak knew or did not know about the progress of the negotiations was immaterial. Novak v. Seiko Corp. et al., Civ. No. 99-1022-MA (Opinion, Sept. 26, 2000).

Plaintiff's Counsel:

Dennis Elliott

Defense Counsel:

Mark Friedman

Labor

Plaintiffs brought an action for unpaid overtime under the FLSA and state wage and hour statutes. Judge Redden permitted the action to proceed as a collective action under the FLSA but denied plaintiffs' motion for class certification under FRCP 23. However, plaintiffs were given leave to renew the motion for class certification after responses were

received to the FLSA opt-in notice. Defendants then filed bankruptcy petitions. The bankruptcy court lifted the stay to allow liquidation of plaintiffs' claims. The parties settled the wage claims and filed a joint motion for approval of the settlement. Plaintiffs renewed their motion for class certification in order to assert claims under state statutes as well as the FLSA, and requested liquidated damages and statutory penalties under both federal and state statutes.

Judge Redden held that the employer had not met its burden of proof on its FLSA affirmative defenses and had failed to show that its violation of the state statutes was not willful. However, he held that plaintiffs were not entitled to claim both liquidated damages under the FLSA and statutory penalties under the state statutes, reasoning that although the FLSA did not preempt state statutes, permitting cumulative penalties would obstruct the FLSA's carefully crafted remedies and constitute unjust enrichment. The motion for class certification was granted, and each plaintiff was given the option of electing either liquidated damages under the FLSA or the statutory penalty provided by the Oregon statute. Allen et al. v. WTD Industries, Inc., Civ. 99-249-RE, (Opinion, October 3, 2000, 15 pages).

**Plaintiffs Counsel: Bud Bailey,
Dana Pinney**

Defense Counsel: Galen Bland

Employment

Plaintiff, an African-American woman, was hired by the State Office for Services to Children and Families as a caseworker. Her supervisor, an African-American man, was instrumental in hiring plaintiff into the job. During her trial service period, her supervisor made numerous comments to her about his opinion that the Caucasian employees did not want the two of them in the office so she had to work harder and be better than the Caucasians. Part way through the trial service, the supervisor's helpful attitude toward plaintiff changed and he became very sharp and demeaning. Before the end of the trial service, plaintiff was terminated on the recommendation of the supervisor. She filed an action against the state and the supervisor, alleging race and sex discrimination. Plaintiff's theory is unusual in that she alleges that a person of the same race applied higher standards to other members of his race and to female employees. Based on the supervisor's remarks to plaintiff and declarations from other minority women employees stating that the supervisor treated them

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differently and accused them of insubordination, Judge King denied defendants' motion for summary judgment. McNack v. Warren, CV99-1211-KI, (Opinion, 9-29-00).

Plaintiff's Counsel: Tom Steenson, Beth Creighton

Defense Counsel:
Patricia Urquhart